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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,615	07/30/2001	Phillip W. Rogaway	ROG01-0002	3083

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EXAMINER

SCHUBERT, KEVIN R

ART UNIT PAPER NUMBER

2137

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/918,615

Applicant(s)

ROGAWAY, PHILLIP W.

Examiner

Kevin Schubert

Art Unit

2137

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


EMMANUEL L. MOISE
SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE:

The applicant has amended claims 69 and 70 to include the limitation of encrypting "a message of arbitrary length into a ciphertext of the same length". This new limitation presents a change in scope of claims 69-70 which requires further search and/or consideration to ascertain whether the new limitation distinguishes over the prior rejection and/or whether the newly amended claims are found in the prior art.

The new abstract has been considered, and the previous objection of the abstract has been withdrawn.

The new drawings have been considered, and the previous objection of the drawings has been withdrawn.

Regarding the 101 rejections, the defining of the authenticated-encryption method to be a "computer-implemented" method overcomes the prior 101 rejection. However, the amendments filed 10/11/05 have not been entered because claims 69 and 70 contain a change in scope as noted above from the new limitation of encrypting "a message of arbitrary length into a ciphertext of the same length".

Regarding the 103(a) rejections, the applicant has presented issues which call into question the obviousness of the examiner's cited prior art and which present an issue of commercial success for the applicant's claimed invention. While relevant to the instant application, these issues need to be presented in the form of a 132 affidavit(s). The examiner refers the applicant to the following passage of the MPEP: "Affidavits or declarations relating to the prior art documents submitted may accompany the citation to explain the contents or pertinent dates in more detail. A commercial success affidavit tied in with a particular prior art document may also be acceptable. For example, the patent owner may wish to cite a patent or printed publication which raises the issue of obviousness of at least one patent claim. Together with the cited prior art, the owner may file an affidavit of commercial success or other evidence of nonobviousness, or an affidavit which questions the enablement of the teachings of the cited prior art" (See MPEP 2205 [R-2]).

The examiner reminds the applicant that the issues presented on the bottom of page 5 and the top of page 6 relate to newly amended claims 69-70 which have not been entered.